91-305

No. (3)

Supreme Court, U.S.
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IN THE

Supreme Court Of The United States

October Term, 1991

IN RE: GRACE R. MASSETT,
Deceased.

ROBERT M. WEICHERT,

Petitioner,

vs.

ELAINE W. ROBERTS,

Respondent.

PETITION FOR WRIT OF CERTIORARI ON APPEAL FROM DISTRICT COURT FOR THE FOURTH DISTRICT-STATE OF FLORIDA

REPLY TO BRIEF IN OPPOSITION

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PREFACE

The parties will be referred to as the petitioner and respondent or by their proper names. The following symbols will be used:

(A) - Petitioner's appendix

(R) - Respondent's appendix.

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REPLY TO BRIEF IN OPPOSITION

This reply brief is filed by petitioner pursuant to Rule 15.6. of the Rules of the Supreme Court of the United States.

Addressing the arguments first raised in the brief in opposition, petitioner respectfully alleges and shows to the court as follows:

1. The estate has not been fully administered. Petitioner, as one of the primary heirs and devisees, has received nothing, and the order allowing the account of Elaine W. Roberts, personal

representative, is presently on appeal because she has converted items of personal property in the estate to her own use. Petitioner's argument is not moot.

2. No evidentiary hearing was ever noticed, or occurred on September 6, 1990 (A-L-1). The lack of transcription or record is solid evidence of that fact. September 6, 1990 was the date set by the Circuit Court to hear argument on the motion to strike the demand for admissions and interrogatories.

3. It is not true, as alleged in the brief in opposition, that review in this court is sought solely on the basis of the unconstitutionality of Section 733.303(1)(a), Florida Statutes. The lower courts have proceeded without jurisdiction, either subject matter or inpersonam jurisdiction of petitioner. Petitioner was never duly served with

process. The decedent was not domiciled nor was a resident of Florida. The execution of the will and codicil are not controlling and have very little relevance as to where the decedent was domiciled or was a resident at the time of her death, especially in light of her New York re-marriage.

4. The information concerning petitioner as a convicted felon was surreptitiously and, without any notice to petitioner, obtained and inserted in the Circuit Court record, giving petitioner no opportunity to argue against it or have his day in court. Petitioner was unaware of any such information until the designation of the record on appeal. Respondent's statement that petitioner was attempting to evade such prohibition against convicted felons is simply not true, nor supported by the facts and circumstances of the record.

5. Petitioner prays that this court will allow a full briefing on the constitutionality of Section 733.303(1)(a) of the Florida Statutes so that petitioner will be allowed to amplify his argument that no state should be allowed arbitrary and capricious discrimination against a very large statistical segment of the American population, without some sort of evidentiary hearing to determine their qualifications to act as a personal representative, executor or administrator of an estate when:

(A) A simple surety bond would satisfy any doubt or anxiety as to such qualifications.

(B) That, in this case, petitioner was to serve jointly with his brother and sister and could never have acted in his individual capacity.

(C) That the age, nature, facts and

circumstances of the conviction could have no relevancy as to their qualifications to serve an estate.

6. The statement by respondent..."This will was admitted to probate September 6, 1990, and at this point in time administration of this estate is complete. But for the filing of this petition for certiorari the administration of this estate would be concluded." is patently false.

Dated: August 29, 1991.

Respectfully submitted,

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